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REPORT OF THE FIFTH MEETING OF STATES PARTIES

Prepared by the Secretariat

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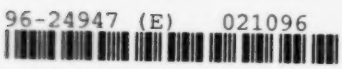

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I. INTRODUCTION

1. The fifth Meeting 1/ of States Parties to the United Nations Convention on the Law of the Sea was convened from 24 July to 2 August 1996 in accordance with article 319, paragraph 2 (e), of the Convention and the decision taken at the fourth Meeting. 2/ Pursuant to that decision, and in accordance with rule 5 of the rules of procedure adopted by the Meeting of States Parties, 3/ invitations to participate in the Meeting were addressed by the Secretary-General of the United Nations to all States Parties to the Convention, and also to the observers referred to in rule 18 of the rules of procedure.

2. The Meeting was held primarily to prepare for and conduct the first election of the 21 Members of the International Tribunal for the Law of the Sea in accordance with the Convention and its Annex VI. It was also to complete the review of the draft Agreement on Privileges and Immunities of the Tribunal with a view to its adoption.

3. The Meeting was opened by the President, Mr. Satya N. Nandan (Fiji).

4. In addition to the documentation available at previous Meetings, the following documents were before the current Meeting:

- Report of the Secretary-General under article 319 of the United Nations Convention on the Law of the Sea (SPLOS/6 and Corr.1);

- Report of the fourth Meeting of States Parties, 4 to 8 March 1996 (SPLOS/8);

- Election of the Members of the International Tribunal for the Law of the Sea: note by the Secretary-General (SPLOS/9);

- Election of the Members of the International Tribunal for the Law of the Sea: List of candidates submitted by Governments: note by the Secretary-General (SPLOS/10);

- Curricula vitae of candidates nominated by States Parties for election to the International Tribunal for the Law of the Sea: note by the Secretary-General (SPLOS/11);

- First election of the Members of the International Tribunal for the Law of the Sea: proposal by the President (SPLOS/L.3 and Rev.1);

- Credentials of representatives to the fifth Meeting of States Parties to the United Nations Convention on the Law of the Sea: reports of the Credentials Committee (SPLOS/12 and SPLOS/13);

- Informal proposals for the organization of work for the session: note by the President (SPLOS/CRP.7);

- Draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/WP.2 and Add.1);

- Germany: Proposals relating to the draft Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/CRP.8);

- Revised budget estimates for the International Tribunal for the Law of the Sea covering the period 1996-1997 (SPLOS/WP.3/Rev.1);

- Schedule for the nomination and election of the members of the Commission on the Limits of the Continental Shelf: note by the Secretariat (SPLOS/L.2);

- Schedule for the nomination and first election of the Members of the Commission on the Limits of the Continental Shelf: draft decision (SPLOS/CRP.9);

- Draft rules of procedure of the Commission on the Limits of the Continental Shelf (SPLOS/CLCS/WP.1);

- Commission on the Limits of the Continental Shelf: its functions and scientific and technical needs in assessing the submission of a coastal State: study prepared by the Secretariat (SPLOS/CLCS/INF/1).

II. ORGANIZATION OF WORK

A. Introductory statement by the President

5. In his opening statement, the President stated that, as delegations were aware, he was personally in a state of transition, 4/ and his intention had been to open the meeting and then take his leave. However, a large number of delegations had prevailed on him to provide continuity and to complete the current phase of work, which had begun in November 1994. He invited the States Parties to elect a new President and a new Bureau at the next meeting, which would take place in March 1997.

6. The President stated that the current session was of historic significance for a number of very important reasons. Firstly, the Agreement to implement the provisions of Part XI of the Convention would enter into force during the current meeting. He noted that by a remarkable coincidence the Agreement, which had been adopted by the General Assembly two years before, would also enter into force on 28 July. For the first time, the Convention and the Agreement, which by its terms is an integral part of the Convention, would be in force together.

7. The second matter of significance was that the Convention had reached an important milestone since the last meeting, as the number of States Parties had now grown to more than 100. Given the momentum it had generated already, in the not too distant future the Convention would achieve the highest number of States parties for a treaty of such significance in international law. The international community had striven to make the Convention a universal instrument, and the growing numbers of States Parties attested to the fact that it was achieving that goal. When the Convention had entered into force, there were only two industrialized countries out of the 60 States Parties. Now, among

the 100 States Parties, there was a significant representation from all regions and all interest groups.

8. The President concluded that the third historic event consisted in the first election of the Members of the International Tribunal for the Law of the Sea. The election would be the culmination of the work done by the Meeting of States Parties since 1994 and indeed going back to the Third United Nations Conference on the Law of the Sea. He pointed out that the success of the Tribunal would depend on two factors: firstly, how wisely the Meeting would choose its Members to ensure its quality and to reflect its universal character, and secondly how the Tribunal would organize itself to ensure that its procedures were user-friendly and cost-effective and conduct itself in order to inspire confidence.

9. He recognized that the Meeting was very fortunate because the nominations had produced excellent candidates from all regions and all the principal legal systems, and represented all the various interests in the law of the sea. There were 33 candidates from which the Meeting had to elect 21 judges. All candidates were highly qualified, able and distinguished. Most if not all had long associations with the law of the sea. The President was of the view that the Tribunal and the international community would be well served by any 21 of the 33 candidates.

B. Organization of work

10. With respect to the work programme, the President referred delegations to the note prepared by him on the organization of work of the session (SPLOS/CRP.7). The election of the Members of the Tribunal was identified as being of the highest priority for the Meeting. The completion of the review of the draft Agreement on Privileges and Immunities of the Tribunal constituted the other matter of urgency.

11. On the understanding that the above matters would be given priority, the Meeting decided also to examine the other issues referred to in the note by the President.

C. Election of officers

12. On the nomination of the Eastern European Group of States, the Meeting elected Slovakia as a Vice-President by acclamation.

III. ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

A. Election of the 21 Members of the Tribunal

13. The President explained that out of 21 seats on the Tribunal, 15 seats had already been committed in accordance with article 3, paragraph 2, of Annex VI to the Convention, which provides that there shall be no fewer than three members

from each of the five geographical groups as established by the General Assembly of the United Nations. He pointed out that one candidate was a national of a country that was not a member of any such group. He urged the Meeting to adopt a fair and reasonable solution to the question of how to deal with the six remaining seats. He further urged that all candidates must be given an equal opportunity to contest the election. The President proposed, and it was agreed by the Meeting, that he would hold informal consultations on the question.

14. On the basis of his consultations and various suggestions made, the President put forward a proposal (SPLOS/L.3). After further consultations, the President issued a revised proposal (SPLOS/L.3/Rev.1), which contained the procedures for the election of the Members of Tribunal. That proposal was adopted by consensus on 31 July 1996.

15. In adopting the proposal contained in SPLOS/L.3/Rev.1 the Meeting, inter alia, decided that the 21 Members of the Tribunal shall be elected as follows: 5/

(i) Five judges from the African Group;

(ii) Five judges from the Asian Group;

(iii) Four judges from the Latin American and Caribbean Group;

(iv) Four judges from the Western European and Other States Group;

(v) Three judges from the Eastern European Group;

The decision also provided that in case there was a candidate who did not belong to any regional group, that candidate would be grouped with any of the regional groups mentioned above according to the principles contained in the Convention. For the purpose of the current election, the candidate who was a national of a State which did not belong to any regional group, if elected, would be within the allocation in (iv) above.

16. On 1 August, the Meeting proceeded to the election. Ireland, the Federated States of Micronesia, Slovenia, Uruguay and Zambia were appointed Tellers for the election.

17. Eight rounds of balloting were conducted.

18. At the first round, 100 valid ballots were cast. There were no invalid ballots and no abstentions. The following candidates were elected with the required majority of 67 votes: 6/ Mr. Caminos (Argentina) (78), Mr. Kolodkin (Russian Federation) (79), Mr. Laing (Belize) (88), Mr. Marotta Rangel (Brazil) (74), Mr. Marsit (Tunisia) (74), Mr. Nelson (Grenada) (84), Mr. Park (Republic of Korea) (69), Mr. Rao (India) (68), Mr. Vukas (Croatia) (80), Mr. Warioba (United Republic of Tanzania) (68), Mr. Wolfrum (Germany) (76), Mr. Yamamoto (Japan) (82) and Mr. Yankov (Bulgaria) (85).

19. After the second round of balloting, with 100 ballots cast, one invalid ballot and no abstention, Mr. Treves (Italy) was elected with 67 votes, against the required majority of 66.

20. At the third round of balloting, 99 ballots were cast with 1 invalid ballot and no abstentions. No candidate received the required majority of 66 votes.

21. Following the third round, the representatives of Austria, Côte d'Ivoire, Finland and Zaire withdrew the candidatures of Mr. Rosenne, Mr. Degni-Segui, Mr. Hakapää and Mr. Bula-Bula, respectively, whom their Governments had nominated.

22. A fourth round was then carried out, with 100 ballots cast. There were no invalid ballots and no abstentions. The following candidates were elected with the required majority of 67 votes: Mr. Mensah (Ghana) (81) and Mr. Ndiaye (Senegal) (82).

23. Thereafter, in accordance with the agreed procedure, the President suspended the meeting briefly in order to allow some time for reflection. When the meeting was reconvened, the representatives of the Sudan, Mali and Sri Lanka respectively withdrew the candidatures of Mr. El-Hussein, Mr. Fomba and Mr. Pinto.

24. A fifth round of balloting was carried out for the remaining seats. There were 99 ballots cast with no invalid ballots and no abstentions. The required majority was 66 votes and Mr. Akl (Lebanon) (80) and Mr. Eiriksson (Iceland) (74) were elected.

25. Thereafter, the representative of Uganda withdrew the candidature of Mr. Ochan.

26. At the sixth round of balloting, 98 ballots were cast with no invalid ballots and no abstentions. The required majority was 66 votes and Mr. Engo (Cameroon) (81) and Mr. Zhao (China) (69) were elected.

27. Thereafter, the representative of Australia withdrew the candidature of Mr. Shearer.

28. At the seventh round of balloting, 97 ballots were cast, with no invalid ballots and two abstentions. No candidate obtained the required majority of 64 votes.

29. An eighth round of balloting was then carried out. Ninety-seven ballots were cast, with 1 invalid ballot and 2 abstentions. The required majority was 63 and Mr. Anderson (United Kingdom of Great Britain and Northern Ireland) (63) was elected.

30. On 2 August, in accordance with article 5, paragraph 2, of Annex VI to the Convention and the agreed procedure, the Director of the Office of the Legal Counsel, Office of Legal Affairs, in his capacity as representative of the Secretary-General, drew lots on the terms of office of the 21 Members of the Tribunal, with the following results:

(a) Seven Members to serve a 3-year term: two from the African Group: Mr. Engo and Mr. Warioba; two from the Asian Group: Mr. Akl and Mr. Rao; one from the Eastern European Group: Mr. Kolodkin; one from the Latin America and Caribbean States Group: Mr. Marotta Rangel; and one from the Western European and Other States Group: Mr. Wolfrum;

(b) Seven Members to serve a 6-year term: one from the African Group: Mr. Ndiaye; one from the Asian Group: Mr. Zhao; one from the Eastern European Group: Mr. Yankov; two from the Latin America and Caribbean States Group: Mr. Caminos and Mr. Laing; and two from the Western European and Other States Group: Mr. Eiriksson and Mr. Treves;

(c) The remaining seven Members would serve for the full nine-year term: Mr. Marsit, Mr. Mensah, Mr. Park, Mr. Yamamoto, Mr. Vukas, Mr. Nelson and Mr. Anderson.

31. The President on behalf of the States Parties congratulated those elected to the Tribunal. He stated that the States Parties had selected an outstanding set of individuals to compose the Tribunal. The President believed that the opinions and pronouncements of the Tribunal, which was of equal efficacy to any other existing tribunal, would be carefully watched and in time achieve a status second to none. The President further stated that the election of the complete set of 21 Members of the Tribunal was a rare and historical opportunity to introduce a new "breed" and large number of international lawyers in the international judicial ranks. The President repeated his opening remarks that the success of the Tribunal would depend on how user-friendly and how innovative it would be. He concluded that the international community had revolutionized the international law of the sea, and since the Tribunal was the product of that revolution, it was to be hoped that it would continue that process of reform and reflect the new realities in international relations.

B. Other matters relating to the establishment of the Tribunal

32. The President recalled that the initial budget of the Tribunal had been approved at the fourth Meeting. 7/ The Secretariat had advised States Parties on their advance contribution in order that preparatory work could be undertaken by the Secretariat. The responses received by the end of July had been very limited in number: out of 85 States Parties, only 13 States had paid their advance contributions, totalling approximately US$ 289,000. In the meantime, preparations for the Tribunal by the host city of Hamburg and the German Federal Government, including for the ceremonial inauguration to be held on 18 October 1996, were well under way, for which he expressed appreciation on behalf of the Meeting of States Parties.

33. On 25 July, the Meeting decided to authorize the Tribunal, as a matter of priority, to undertake negotiations with the United Nations on relationship arrangements and with Germany on a headquarters agreement. 8/ At the same meeting, the States Parties also decided to authorize the Tribunal to enter into negotiations with the International Seabed Authority on relationship arrangements.

34. The Meeting was informed by the representative of Germany on matters relating to the convening of the first meeting of the Members of the Tribunal, the ceremonial inauguration of the Tribunal and the practical arrangements with regard to its seat in Hamburg.

35. It also considered certain administrative matters to facilitate the establishment of the Tribunal. Thus, the Meeting decided to authorize the Tribunal to establish its own financial and staff rules and regulations to be submitted to the Meeting for consideration. It also decided to request the Tribunal to apply for membership in the United Nations Joint Staff Pension Fund with the understanding that such a request would require the sponsorship of States Members of the United Nations in the General Assembly.

36. On the issue of a report on the Tribunal's activities, the Meeting agreed that although the Secretary-General's report under article 319 of the Convention and his annual report under the item "Law of the Sea" at the General Assembly should cover those activities to a certain extent the Tribunal should also be encouraged to present a report on its work directly to the Meeting of States Parties. It also recognized that since the proceedings of the General Assembly were of interest to the Tribunal, the Tribunal should be appropriately represented at the meetings of the Assembly and should apply for observer status.

IV. CONSIDERATION OF THE DRAFT AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE TRIBUNAL

37. The Meeting of States Parties decided to create a working group of the whole to discuss the draft Agreement on the Privileges and Immunities of the Tribunal (SPLOS/WP.2 and Add.1). Mr. P. Tomka of Slovakia, one of the Vice-Chairmen of the Meeting, was appointed Chairman of the Working Group.

38. The Working Group held three meetings, but owing to lack of time it was not able to complete its review of the draft Agreement.

39. The President suggested that in order to have sufficient time to consider the proposals put forward by the German delegation on the question of taxes and customs duties, a discussion of the proposal should be postponed until the next session. He stated that the matter was important and would affect the Tribunal and set a precedent for the negotiations of the Headquarters Agreement between the Tribunal and the host country. Since the Tribunal was to convene in October 1996, it would have the opportunity to look at the proposals and perhaps give its views so that they could be taken into account at the next Meeting of States Parties. He stated that while he could agree with the suggestion of the representative of Germany that experts on fiscal and customs matters be included in the delegations of States Parties for the deliberations on the issues at the next Meeting, he felt that the issues under consideration were not merely tax and customs issues but also those of privileges and immunities and therefore were of a legal and political nature and should also be seen in that light. The President further stated that if a country submitted itself as a host country for an international body, it also assumed certain obligations in respect of that body, unless those obligations were expressly excluded at the time the

decision was taken to select the host country concerned. In that regard the host country was required to provide the same level and standard of privileges and immunities for the Tribunal and its functionaries as was well established in international practice. No attempt whatsoever should be made to undermine such practice. A change in circumstances should not result in a change in the terms of the acceptance of a particular host country; otherwise the terms of such an acceptance would have to be looked at very carefully. He expressed the hope that the States Parties would conclude discussions of the agreement at its next Meetings, adopt it and seek accession thereto.

40. The States Parties decided to hold further meetings on the draft Agreement and finalize it at the next Meeting of States Parties in March 1997.

V. PREPARATIONS FOR THE ESTABLISHMENT OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

A. Dates for the nomination and election of the members of the Commission

41. The Meeting decided that the first election of all 21 members of the Commission would commence on 13 March 1997 at the sixth Meeting of States Parties, to be held from 10 to 14 March 1997.

42. Furthermore, it was decided that:

(a) The nominations of candidates would open on 11 November 1996 for any State Party. States in the process of becoming a party to the Convention could also nominate candidates. The nominations by the latter States would remain provisional and would not be included in the list to be circulated by the Secretary-General of the United Nations in accordance with article 2, paragraph 2, of Annex II to the Convention, unless the States concerned had deposited the instrument of their ratification or accession on or before 5 February 1997;

(b) The nominations would close on 5 February 1997;

(c) The list of candidates would be circulated by the Secretary-General on 14 February 1997;

(d) Subject to the above, all procedures relating to the election of the members of the Commission as provided by the Convention shall apply;

(e) No changes might be made to the above schedule unless the States Parties agreed by consensus.

B. Documentation prepared by the Secretariat

43. The Meeting took note of the study by the Secretariat entitled "Commission on the Limits of the Continental Shelf: Its functions and scientific and

technical needs in assessing the submission of a Coastal State" (SPLOS/CLCS/INF/1).

44. The Secretariat circulated draft rules of procedure of the Commission, which it had prepared at the request of the Meeting (SPLOS/CLCS/WP.1).

VI. OTHER MATTERS

A. Reports of the Credentials Committee

45. On 25 July 1996, the Meeting of States Parties appointed a Credentials Committee consisting of the following members: Cameroon, Croatia, Germany, Malta, Marshall Islands, Philippines, Senegal, Trinidad and Tobago and Uruguay.

46. The Credentials Committee held its first meeting on 30 July and elected Mr. Gilberto B. Asuque (Philippines) as its Chairman. At that meeting, it examined the credentials of representatives to the fifth Meeting of States Parties.

47. On 31 July, the Committee presented its first report (SPLOS/12 and Corr.1) to the Meeting, which approved the report.

48. On the same day, the Committee held its second meeting to examine additional credentials. A second report (SPLOS/13) of the Credentials Committee was presented to and approved by the Meeting of States Parties later on the same day.

49. At its two meetings held during the fifth Meeting, the Credentials Committee examined and approved credentials submitted by representatives of 100 States Parties to the Convention.

B. Dates and programme of work for the sixth and seventh Meetings

50. The Meeting decided to hold its sixth Meeting from 10 to 14 March 1997.

51. The following programme of work was adopted for the sixth Meeting:

(a) Election of the President of the Meeting of States Parties;

(b) Election of the 21 members of the Commission on the Limits of the Continental Shelf;

(c) Consideration of the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea.

52. The Meeting of States Parties decided also to hold its seventh Meeting in New York from 19 to 23 May 1997. That session would be convened to deal in particular with the budget of the Tribunal.

C. Concluding statement by the President

53. In his closing statement, the President stated that the current Meeting of States Parties was the last that he would be chairing, and thanked delegations for their guidance and cooperation. His preoccupation throughout his long involvement with the law of the sea had been to keep all parties together in spite of different views that had previously prevailed on parts of the Convention and to promote convergence. In that regard, the Agreement on the implementation of Part XI constituted a success and one of the most critical achievements since it had opened the door for universal participation. He felt confident that with the important milestone of over 100 States becoming parties to the Convention, still more ratifications would be forthcoming. The President stated that he felt great satisfaction in having guided the work at the formative stage of establishing the institutions under the Convention. He said that the Convention had established norms for the conduct of relations among States on maritime issues. Although there were conflicts in the oceans, they were not based on what the law was, but rather related to its interpretation and its application in particular situations. The Convention had also provided peaceful means for the settlement of disputes relating to areas covering some 70 per cent of the Earth's surface. Tremendous progress had thus been achieved, with a very important and significant contribution to peace and security of the world.

Notes

1/ The previous four Meetings of States Parties were held on 21 and 22 November 1994, from 15 to 19 May 1995, from 27 November to 1 December 1995 and from 4 to 8 March 1996.

2/ SPLOS/8, para. 16.

3/ SPLOS/2/Rev.3.

4/ Mr. Satya Nandan was elected in March 1996 Secretary-General of the International Seabed Authority.

5/ SPLOS/L.3/Rev.1, para. 2.

6/ Figures in parentheses indicate votes obtained.

7/ SPLOS/WP.3/Rev.1.

8/ See LOS/PCN/152, Vol. I (LOS/PCN/SCN.4/WP.16/Add.2), p. 91.